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ABSTRACT

This transcript of an oral presentation reviews a Kansas Supreme Court decision concerning supplemental contracts (the Hachiya decision), which held that coaching is always performed under a supplemental contract no matter when the assignment occurs. Four previous decisions regarding coaching and contracts are discussed: (1) Smith v Board of Education, Illinois 7th Circuit Court, 1983; (2) Slockett v Iowa Valley Community School District, Supreme Court of Iowa, 1984; (3) Swager v Board of Education, Kansas Court of Appeals, 1984; and (4) Unified School District 241 v Swanson, Kansas Court of Appeals, 1984; facts in the Hachiya case were that coaching was performed during the last (seventh) period of the day. When the coaches involved resigned their coaching duties, the board offered them a six-sevenths contract for the ensuing school year. The board decision was upheld by the district and appeals courts, but the Kansas Supreme Court concluded that regardless of when the assignment occurs the person assigned to coach does so under a supplemental contract. The court also held that the teachers had attained full-time tenure status even though one-seventh of their contracts involved supplemental duties. Questions raised by this case regarding supplemental duties tied to curricular activities are considered. (DHP)

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NATIONAL RURAL EDUCATION ASSOCIATION ROUND-UP

BISMARCK, NORTH DAKOTA

TITLE - SUPPLEMENTAL CONTRACTS - NEW RESTRICTIONS, NEW CHALLENGES

OVERVIEW OF PRESENTATION - This oral presentation will review a recent Kansas Supreme Court decision concerning Supplemental Contracts which was lost by U.S.D. #307. The decision further restricts the ability of Local Boards and Administration to assign personnel, and aggravates the problems related to filling coaching and sponsorship vacancies. The presentation will review past decisions, provide a chronology of the district's case, and discuss its ramifications for school districts nationwide.

INTRODUCTION - My name is Bill Walz, Superintendent of Ell-Saline Schools, Salina, KS. assisting me is Kenneth Berndt, a Board member who was president of the Board when the suit was filed. We are not attorneys! Our purpose in presenting today is not to bore you with details of our court case, although we may, it is not to tell you of the ramifications of our law suit on our district, which we will, the real purpose is to provide a forwarning to you of the direction litigation has taken which will no doubt affect you and your district. It should be noted that this was a Kansas decision, based on Kansas law, these rulings do however have the tendency to be read, and correlated with other states. When the Swager decision (which we will cover shortly) came down in Kansas, I was the Superintendent of a district in Alaska, but the results were noted there in law workshops and in local negotiations! These decisons while they do not obviously have the same weight in other states help set the stage, or sway the conscious or uncounsious mindd.

Demographics - we are a school district of 362 students, K-12, in North Central Kansas. We have a seperate 7-12 facility, and cover an area of 225 Sq Miles. Because of facility limitations, and busing distances, we hold Jr High practice during the last hour of the day for approximately 53 Minutes. This situation set the stage for our coaches to resign their coaching duties and the subsequent law suit; the outcome of which we believe has far reaching affects for Kansas particularly, and the nation generally.

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Questions for the audience - How many of you have trouble getting and keeping coaches?

How many have teachers/coaches that continue to coach until they get tenure then ask to be relieved of their coaching duties?

When we talk about coaches my mind during this time of the year turns to Football - I'd like to share a story with you about FOOTBALL- at the Univ of Kansas!

A man in his late twenties came into a bar in Lawrence on Saturday afternoon, he carried under his arm a small dog. "I'll have a beer and bring another for my dog" he told the bartender. The dog sat obediently at the bar with his master, not touching his beer, and both began attentavely watching the KU football game that had just begun.
Things started off pretty well for the Jayhawks, they had lost the toss but on the second play from scrimmage the opposition threw an interception. At this, the dog did two back flips on the bar, and lapped up some beer. Everyone in the bar was impressed. Unable to move the ball KU brought in the field goal unit and proceded to kick a forty yard field goal. With this the dog exploded around the bar, making three laps, did two more flips, and lapped up some more beer. The people at the bar were amazed! "That's great" one man said, "What does he do when they score a touch down?" The owner thought for a moment and said, "you know, I'm not sure" but I've only owned the dog for four years!"

While frequently schools may not have a great deal of prowess in sports, teacher/coaches are still very important people in the American schools overall environment. They are role models for our children, teach many of the fundamentals of life; team work, cooperation, dealing with defeat and success (that is if you concur with the" playing fields of Eaton concept"), but in many ways the teacher/coach may be becoming an endangered species!

Setting the stage - four recent cases have been adjudicated that have a bearing on our descion and help me support the endangered species statement.

(LAW QUOTE "Isn't it odd that we need a library of law books to interpret and enforce what someone else stated in ten short sentences." My task here is the reverse, I have to take a two foot stack of arguments, decisions, and rulings and put it into twenty minutes so that we lay people can understand it!)

Decisions that set the stage for the Hachiya Decision

1) Smith V. Bd of Educ. (ILL) 7th Cir. Ct 1983

2) Slockett v Iowa Valley Comm. School Dist (Sup Ct of Iowa) 1984

3) SWAGER v Bd of Educ. Ks 1984 (KS Ct of App)

4) U.S.D. 412 v. SWANSON (KS Ct of App 1986

SMITH - Two physical education teachers who, for several years, had also been employed as coaches brought suit against their school board after they were told, without benefit of a hearing, that their coaching positions would not be renewed. The plaintiffs alleged before the US Court of Appeals, Seventh Circuit, that under the Illinois Tenure Act, their years of employment as coaches entitled them to statutory tenure which in turn entitled them to a hearing before termination. The court held that this act did not provide protection for coaching positions. It stated that the act "was intended to bolster the quality of academic programs in Illinois schools by ensuring that qualified teachers with several years experience are not replaced for arbitrary, political, or partisan reasons." The court futher stated that "teacher" is defined as "any school district employee regularly required to be certified." As Illinois does not require coaches to be certified, the court reasoned that coaches are not teachers within the meaning of the Illinois Tenure Act. The plaintiffs' statutory tenure claim was rejected. A secondary argument, that they were

entitled to de facto tenure as a result of their reasonable expectation of re-employment, was also rejected. Smith v. Bd. of Educ., 708 F.2d 258 (7th Cir.1983). (Fr. Deskbook Ency of Sch Law, 1987)

SLOCKETT - At issue before the Supreme Court of Iowa was whether a coaching contract created a tenured position. A female teacher was first hired both as a physical education instructor and junior high basketball coach. This arrangement was made pursuant to a single contract. In the teacher's third year, two documents were executed, one entitled "Agreement to Modify Teacher's Continuing Contract", and another document called a "Coaching Contract." At this time, the teacher assumed a varsity basketball coaching position in addition to her other duties, and continued her employment under this arrangement until the school board voted not to offer her the head girls' varsity basketball coaching position. There was no attempt to terminate her other duties. The teacher brought suit against the school district asserting contractual rights to the head coaching position. She claimed the district, having failed to terminate her coaching position in accordance with statutory procedures, was without power to do so unilaterally. The Iowa Supreme Court determined that the head coaching position was a mere extra-duty assignment and did not qualify as a tenured teaching position. Hence, it ruled that the district was not

obligated to comply with statutory requirements for terminating tenured positions. The Iowa legislature, found the court, intended for tenure to attach to teaching positions, not coaching assignments. Further, where the coaching position was, by agreement of the teacher and the school district, a mere extra-duty assignment, it was not a tenured teaching position. Slockett v. Iowa Valley Comm. School Dist., 369 N.W.2d 446 (Iowa 1984). (Fr. Deskbook Ency. of Sch Law)

SWAGER - A teacher in Kansas who wrote a letter to his school board voluntarily giving notice of nonrenewal of his supplemental basketball coaching contract was shocked to learn that the school district had also terminated his teaching contract. The school board had interpreted the teacher/coach's resignation as head basketball coach as a resignation from all teaching and coaching duties. The teacher brought a legal action to determine his right to reinstatement as a high school math teacher. A trial court held in favor of the school district and the teacher appealed to the Court of Appeals of Kansas, which reversed the trial court's decision. The appellate court found evidence that the school district had previously acted unilaterally and without due process to remove coaches from their positions. This was sufficient to establish that coaching duties were performed pursuant to supplemental contracts and not as an integral part of primary contracts, even though there was a single written instrument. Thus,

the teacher was within his rights to nonrenew his supplemental contract and this had no effect on his primary math teaching contract. Swager v. Bd. of Educ., 688 P.2d 270 (Kan.App. 1984). (Fr Deskbook Ency of Sch Law, 1987)

SWANSON - The Kansas Court of Appeals ruled that a teacher's primary teaching contract may not be cancelled due to his or her refusal to perform a supplemental duty such as coaching. In this case, a tenured teacher taught American history, driver's education and physical education. He also performed supplemental duties such as boys' basketball head coach, track coach and laundry duty supervisor. He resigned from the basketball coach position and then signed a new contract with the basketball position eliminated. Later, when the school was unable to fill the basketball coaching position, the school unilaterally reassigned the position to the teacher, as provided by the teacher's contract. He refused to accept his former duties and the school board brought a lawsuit against the teacher to compel him to accept the position. A state trial court ruled that the teacher's refusal was insubordination and a breach of his contract. The court of appeals reversed this decision. It held that the provision in the teacher's contract which purported to grant to the school district the right to make unilateral extra-duty assignments was in conflict with state tenure laws; thus the contractual provision was void. The court of appeals remanded the case to the trial court with

directions to rule in favor of the teacher. Unified School District No. 241 v. Swanson, 717 P.2d 526 (Kan.App.1986) (Fr Deskbook Ency of Sch Law, 1987)

What then has been established ?

A) Teachers cannot receive tenure as coaches

B) Boards can relieve teachers of coaching duties and not affect their teaching contracts

C) Teaching and Coaching contracts are basically seperate, and a tenured teacher cannot be release if they decide not to coach.

D) Teachers can't be required to perform supplemental duties even if it is negotiated!

WHAT WAS OUR DECISON AND HOW DID IT RELATE TO EARLIER CASES?

BACKGROUND OF THE CASE - Robert Hachiya and Cheri Livingston were tenured teachers in USD #307 and both coached Junior High School athletics. All students were required to take Junior High PE or athletics during the last period of the day. All practice for athletics took place during this period (which is provided for in KS Ed. Regs) with competition taking place after school or on Saturdays.

Both teachers in 1984 (remember this is he year the Swager decision came down) resigned their coaching positions for the 1985-86 school year. The board subsequently assumed they were resigning the "coaching period" and offered them a 6/7 contract for the 1985-86 school year. The teachers signed this contract but reserved the right to file this action.

The district court found for the district and determined that the teachers had voluntarily resigned part of their teaching duties. This decision was appealed, and the Court of Appeals agreed with the lower court and concluded that the board had the right to make what usually might be considered a supplemental duty, a part of the primary contract.

The Supreme Court however rejected this logic, and concluded that regardless of when the assignment occurs the person who is assigned to "coach" must do so under a supplemental contract. The court rejected the arguement that the term "coaching" was modified by the term "extra-curricular", and concluded that "coaching" whether curricular or extra-curricular must be governed by a supplemental contract.

Finally the court found that the teachers had attained full-time tenure status, even though 1/7 of their contracts had involved supplemental duties. The court reasoned that

the board had effectively waived tenure requirements by treating the supplemental duties as primary duties, and ordered the teachers reinstated to full-time positions with back pay.

This case raises interesting questions about supplemental duties which are directly tied to curricular subjects. The opinion clearly suggests that curricular duties cannot be included in a primary contract if they also meet the definition of a supplemental duty under K.S.A. 72-5412a. This would seem to conflict with the statutory power and duty of the board to determine the curriculum. The court, however, did not address this issue directly.

A motion for reconsideration and clarification was denied by the Supreme Court and the district has settled with the teachers in question.

INTERJECTED COMMENTS FROM KENNETH BERNDT ON THE FEELINGS OF THE BOE, AND HIS PERCEPTIONS OF WHAT TOOK PLACE!

The problems this decision caused for our district

1) Back Wages

2) Providing additional teaching slots (however, we are a growing distirct)

3) Animosity this kind of case creates - then and now!

4) Coaching vacancies were created (we have not changed our past practice of having Jr High Practice last hour because:

we had people hired,
they were non-tenured,
negotiating 1/7 of a salary difficult,
other facility/busing problems still exist

Another consideration - when applicants apply for jobs do they use the fact that they can coach as a lever to get a job? We never take this into consideration when we hire do we administrators! It seems like three years after a "coach gets a job based on his "other" abilities, he wants to judged solely as a teacher!

RAMIFICATIONS FOR OTHERS

Many interesting questions are raised by this case regarding the relationship of supplemental duties that are tied to curricular duties. These areas would include band, vocal music, forensics, yearbook, newspaper, FFA, FHA, and a host of others.

SOME POSSIBLE RESULTS/SOLUTIONS

We could hire:

Parents (ala' Little League)

College students as coaching aides

OR

Drop activities altogether. Should the schools be responsible anyway?

Pay Coaches more? In KS it is rumored that after they won this decision they were proposing legislation which would require that you must be certified to coach!

IMPLICATIONS FOR RURAL AND SMALL SCHOOLS - numerous schools in rural areas, because of distances and transportation costs hold junior high schools practice, and in some cases, varsity practices, during the school day. This ruling would have the effect of curtailing this common prodcedure. It could also mean that a teacher could resign the after school coaching part of the contract, but still teach the "coaching period" or require the district to offer another class to assure him or her a full time position.

The above is also true of after school "supervision or directing" such as music, yearbook, forensics, etc. Many people enjoy the subject and the class, but resent the after school activities, and the hours of commitment it requires! Rural and small schools are especially vulnerable because of the large percentage of teachers that coach and/or sponsor activites. Also, the availability of community members who

would be willing and qualified to coach or direct, in the place of teachers, is often very limited.

WHAT CAN WE DO?

Avoid this type of suit through good personal relation skills/ try other avenues. You may be right (we still think that we are!) but the consequenses are often worse than the compromise, and the court cases that will follow will have a negative affect on all districts.

Support legislative change which will cover this area- this is an election year in KS and with the lobbyist clout the Union(NEA) has, our legislators were affaid to support it.

I am not sure any real answer exists to stop the problem, but the fact that you are aware of the options teacher may take, may help you curtail some of these problems.